

PAY ADMINISTRATION

Law Enforcement Availability Pay

APPROVAL/TRANSMITTAL

This revision clarifies certification requirements and reflects organizational changes. This supersedes IG-3552, dated March 1995. Remove and destroy previous editions.

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Inspector General

A. BACKGROUND: The Law Enforcement Availability Pay Act of 1994 (the Act) provides that criminal investigators shall receive availability pay for unscheduled duty in excess of a 40-hour workweek. The availability pay shall be 25 percent of the rate of basic pay for the position. Availability pay replaces Administratively Uncontrollable Overtime (AUO) and is provided in anticipation of the unscheduled duty that criminal investigators are expected to perform due to the nature of their work. Availability pay provides criminal investigators with a guaranteed and uniformly applied form of compensation for unscheduled duty, and simplifies budgeting, work scheduling, and operations for OIG.

1. Definitions

a. The term "available" refers to the availability of a criminal investigator and means that an investigator shall be considered generally and reasonably accessible to perform unscheduled duty based on the needs of OIG.

b. The term "criminal investigator" or "investigator" means OIG employees in the GS/GM-1811 classification series at grades 5 through 15.

c. The term "unscheduled duty" means hours of duty a criminal investigator works, or is determined to be available to work, that are not part of the 40 hours in a basic workweek or overtime hours paid under 5 U.S.C. 5542 (scheduled overtime).

d. The term "regular workday" means each day in the criminal investigator's basic workweek during which the investigator works at least 4 hours that are not overtime hours paid under 5 U.S.C. 5542, or hours considered part of 5 U.S.C. 5545a

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(availability pay). Thus, if a criminal investigator is in training status or on leave for more than 4 hours on a day within the employee's basic workweek, the day is not considered to be a regular workday.

e. The term "annual period" means the 12 months during the fiscal year. Criminal investigators may be placed on availability pay at any point during the Fiscal year. The number of days used in the annual certification will be adjusted to correspond with the number of available days in the remainder of the fiscal year.

f. "LEAPS" (Law Enforcement Availability Pay System) is the software program used to track unscheduled duty hours and produce availability pay reports.

g. The term "excludable day" means any day in the basic workweek which is a holiday or during which the criminal investigator took more than 4 hours of leave, received more than 4 hours of training, was on excused leave for more than 4 hours in connection with job relocation purposes (house hunting, travel to duty station, etc.), or was engaged in travel under official travel orders for more than 4 hours, or was on any combination of the foregoing which add up to more than 4 hours. (Travel hours are limited to hours during which the investigator is traveling under official travel orders. Local area travel that is part of an investigator's normal duties should not be excluded as workhours in determining regular workdays. An investigator is traveling under official travel orders only for out-of-area travel and then only for that period of time during which he or she is actually engaged in traveling. Once an investigator reaches the out-of-area destination, any local travel in that area must be treated the same as local travel in the area where the investigator is permanently stationed.)

B. POLICY: Criminal investigators and supervisory criminal investigators (GS/GM-1811 grades 5 through 15) shall receive availability pay and must, on an annual basis, work an average of at least 2 hours of unscheduled duty in excess of each regular workday. Such criminal investigators are exempt from the provisions of the Fair Labor Standards Act of 1938 (29 U.S.C. 213).

C. PROCEDURES

1. General Rules

a. Annual Certification. Before being placed on availability pay, criminal investigators must certify their availability for each fiscal year using the format specified in exhibit A. The Act requires that each criminal investigator annually certify that he or she is expected to perform official duties during unscheduled duty hours and to be

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available to perform those duties during unscheduled duty hours for the remainder of the fiscal year. A certification shall no longer apply when an investigator separates from Federal service, is employed by another agency, or moves to a position that does not qualify as a criminal investigator position. Completed certifications for criminal investigators should be retained in the regional or divisional offices with the employees' time and attendance records for a period of 6 years.

b. Newly Hired Criminal Investigators. Availability pay will commence for all newly hired criminal investigators upon graduation from basic criminal investigator training and upon certifying their expectation to meet the requirements to receive availability pay (exhibit A). Criminal investigators transferring from other agencies will be placed on availability pay upon verification that they are graduates of an approved basic criminal investigator training program and upon completion of a certification (exhibit A).

c. Requirements of the Position of Criminal Investigator. The duties performed by an OIG criminal investigator require substantial amounts of irregular or occasional overtime duty, which constitutes a continual requirement of the position, with the employee generally being responsible for recognizing, without supervision, circumstances which require the employee to remain on duty. It is, therefore, expected that each criminal investigator, GS/GM-1811 grades 5 through 15, will meet the requirements for availability pay.

d. Requests for Temporary Exemptions. It is recognized that in certain personal or family hardship situations a criminal investigator may not be able to perform official duties during unscheduled duty hours and to generally be available to the extent required by the Act. In the event of such circumstances, a criminal investigator may request a temporary exemption from availability pay. The request should be in writing and should be directed to the employee's immediate supervisor. The written request should describe the reason why the exemption is necessary and the expected duration of the exemption. The written request must also state that the request is made voluntarily and that the investigator understands that if the request is granted, the investigator will not receive availability pay during the designated period. The SAC or DD/I shall forward the request to the AIG/I with his/her recommendation. The Director, Inspection Division (D/ID) shall forward the request to the Deputy IG with his/her recommendation. The AIG/I or Deputy IG will approve such requests only in exceptional circumstances and only for a specific, limited period of time. The criminal investigator will be placed back on availability pay at the beginning of the pay period following the designated exemption period, upon completion of a new certification. A criminal investigator whose request for a temporary exemption has been approved is still expected to perform unscheduled duty based on the needs of OIG and as a requirement of the position. A voluntary request for a temporary exemption does not trigger adverse action rights.

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e. Calculation of Hours for Availability Pay. Following the close of each fiscal year, the total number of days which are not considered regular workdays (i.e., days in the investigator's basic workweek during which the investigator does not work at least 4 hours) should be deducted from the total possible number of regular workdays in the annual period to determine the net available regular workdays. The net available regular workdays, thus obtained, should be divided into the total number of unscheduled duty hours worked by the criminal investigator during the annual period to obtain the annual average of unscheduled duty hours worked. Unscheduled duty hours which are worked by a criminal investigator on days that are not regular workdays shall be considered in the calculation of the annual average. A criminal investigator shall be paid availability pay if the average number of unscheduled duty hours worked is equal to or greater than 2 hours.

f. Failure to Meet Requirements for Availability Pay. A supervisor may deny a criminal investigator's annual certification for availability pay if a criminal investigator does not meet the annual requirement at the end of the preceding annual period. A supervisor may also revoke a criminal investigator's certification at any time based on a determination that, due to changed circumstances (e.g., the avoidance of work or nonavailability by the criminal investigator), the criminal investigator is no longer expected to meet the average of 2 hours per day requirement. In addition, a supervisor may suspend the availability pay of a criminal investigator who is in duty status but unable to perform unscheduled duty for an extended period due to physical and health limitations. Any revocation of an originally valid certification will be made on a prospective basis and will result in removal from availability pay. Involuntary reduction in pay resulting from a denial of certification and removal from availability pay is considered an adverse personnel action and must be processed accordingly.

g. Monthly Hours Verification. Each supervisor should perform a monthly review of each criminal investigator's hours worked as shown on the Employee Monthly Worksheet. The supervisor and criminal investigator are responsible for establishing a course of action to ensure each individual meets the requirements for the annual certification. It is the responsibility of the supervisor to ensure that during the 12-month period each criminal investigator is maintaining an average of at least 2 hours of unscheduled duty in excess of each regular workday. The supervisor should monitor the hours worked by each criminal investigator throughout the fiscal year to avoid a situation where an investigator has to work an inordinate number of hours in the final months of the reporting period to meet availability pay requirements. To accomplish this, the supervisor should review periodic LEAPS reports.

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h. Requests for Availability Status. Although availability hours during which no work is performed may be used to justify entitlement to availability pay, it was the intent of Congress that the existence of this availability condition should not be interpreted by criminal investigators as a license to reduce their actual workhours. This suggests that agencies should ensure that all investigators receiving availability pay are performing significant amounts of actual unscheduled overtime work, as opposed to being merely available to perform such work. Accordingly, unscheduled duty hours reported by OIG criminal investigators are expected to entail actual work. Occasionally, a supervisor may require that a criminal investigator be available for duty during unscheduled duty hours. A criminal investigator who must be available is not required to remain in the office or at home, but must be reachable by either telephone or beeper. To the extent practical, it is expected that a criminal investigator who must be available will perform actual work (e.g., writing reports, reviewing records, etc.) during the requested period of availability. Placing an investigator in availability status shall not be considered scheduling the investigator for overtime compensation under 5 U.S.C. 5542.

i. Payment of Availability Pay. A criminal investigator who is eligible for availability pay shall receive such pay during any period the investigator is (1) attending agency sanctioned training, (2) on agency approved sick or annual leave, (3) on agency-ordered travel status, or (4) on excused absence with pay for relocation purposes.

j. Relationship to Other Overtime Compensation. Availability pay is compensation for all overtime performed by criminal investigators and supervisory criminal investigators, GS/GM-1811 grades 5 through 15, except for regularly scheduled overtime work as provided under 5 U.S.C. 5542, night duty, Sunday duty, and holiday duty. Criminal investigators may receive regular overtime compensation under 5 U.S.C. 5542, but only for work which is scheduled in advance of the administrative workweek and is either (1) in excess of 10 hours on a day during such investigator's basic 40-hour workweek or (2) on a day outside such investigator's 40-hour workweek. However, all scheduled overtime must be approved in advance by the supervisor. If a criminal investigator is required to work on a Federal holiday, the employee will receive holiday pay for time worked within the employee's normal 8-hour tour of duty and will be credited for availability pay for any time worked before or after normal duty hours.

k. Travel Time. The rules concerning compensation for travel outside of the regular workday or basic workweek are contained in manual section IG-3551, Overtime. Travel to or from Government-sponsored training or normal home-to-work travel within or outside of the basic workweek may not be claimed as unscheduled duty hours.

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l. Relationship to Other Payments. Availability pay will be considered as part of basic pay for the computation of severance pay (under 5 U.S.C. 5595(c)), workers' compensation (under 5 U.S.C. 8114(e)), Thrift Savings Plan (under 5 U.S.C. 8431), retirement benefits (under 5 U.S.C. 8331(3)), lump sum annual leave (under 5 U.S.C. 5551, 5552), and life insurance (under 5 U.S.C. 8704(c)). A criminal investigator may be paid availability pay only to the extent that it does not cause the employee's aggregate rate of pay for any pay period to exceed the lesser of 150 percent of the gross base pay for GS-15, step 1 or the rate payable for Level V of the Executive Schedule.

m. Tours of Duty. With supervisory approval, tours of duty for criminal investigators can be established in accordance with the Flexitime Plan provisions contained in directive number IG-3610, Attendance and Leave, section C 2. Supervisors are responsible for ensuring offices are adequately staffed during core business hours.

2. Reporting Requirements

a. Annual Review and Certification of Availability Hours. Following the close of each fiscal year, by October 15 of each year, each supervisor should review the daily average of unscheduled duty hours for each criminal investigator during the preceding annual period. The SAC or DD/I shall submit a memorandum to the AIG/I certifying each investigator who has met and is expected to continue to meet the requirements for availability pay. The Deputy AIG/I's shall submit a memorandum to the AIG/I certifying each DD/I. The D/ID shall submit a memorandum to the Deputy IG certifying each criminal investigator under his/her supervision. A sample memorandum is contained in exhibit C.

The AIG/I shall review and consolidate the certification memoranda for Investigations criminal investigators and submit a memorandum to the IG attesting that the SAC's and the investigators currently meet and are expected to continue to meet availability pay requirements during the upcoming 1-year period. The Deputy IG shall submit such a memorandum to the IG for ID criminal investigators.

b. Documentation for Temporary Exemptions, Denials, Revocations, and Suspensions. If a criminal investigator is granted a temporary exemption from availability pay, or if a criminal investigator's certification has been denied, revoked, or suspended, the supervisor shall submit a Standard Form 52, Request for Personnel Action (SF-52) to stop the availability pay compensation. The supervisor shall also prepare an SF-52 to reinstate availability pay for a criminal investigator who has had a temporary exemption or for a criminal investigator whose certification had been denied, revoked, or suspended.

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c. Documentation for Newly Hired Criminal Investigators. The SAC or DD/I will certify to the AIG/I, and the D/ID will certify to the Deputy IG that a newly hired criminal investigator, who has graduated from an approved criminal investigator basic training program, or that a criminal investigator transferring from another agency, whose graduation from an approved basic criminal investigator training program has been verified, is expected to meet the requirements for availability pay. A sample certification is shown in exhibit B. The supervisor shall prepare an SF-52 to initiate the availability pay compensation. The AIG/I shall submit a memorandum to the IG attesting that the newly hired investigator is expected to meet availability pay requirements during the upcoming 1-year period. The Deputy IG shall submit a memorandum to the IG for newly hired ID investigators.

d. Monthly Reporting Requirement. Criminal investigators and supervisory criminal investigators should enter their availability pay data on the Employee Monthly Worksheet in accordance with procedures contained in IG-6420, Employee Monthly Worksheet.

e. LEAPS. A secretary or T&A clerk should input the summary availability pay data from the Employee Monthly Worksheet for each criminal investigator and supervisory criminal investigator into LEAPS on a monthly basis. At the request of the supervisor, the secretary or T&A clerk should prepare and print reports concerning availability pay.

CERTIFICATION

I, Special Agent John Doe, certify that I expect to be able to perform official duties during unscheduled duty hours and agree to be available for unscheduled duty based on the needs of the Office of Inspector General, as outlined in directive number IG-3552 of the Inspector General Manual.

Signature

Date

DATE:

REPLY TO
ATTN OF: 3500

SUBJECT: Initial Certification for Availability Pay

TO: Assistant Inspector General
for Investigations

I certify that Special Agent John Doe is expected to perform official duties during unscheduled duty hours or will be available to perform those duties during unscheduled duty hours for the remainder of the fiscal year.

Special Agent-in-Charge

or

Division Director
Investigations

DATE:

REPLY TO
ATTN OF: 3500

SUBJECT: Annual Certification of Availability Hours

TO: Assistant Inspector General
for Investigations

The personnel listed in the attachment performed official duties during this past year (October 1, 19__, through September 30, 19__) during unscheduled hours of duty or were available to perform work during unscheduled hours of duty and are qualified for availability pay in accordance with the Availability Pay Act of 1994 and directive number IG-3552 of the Inspector General Manual.

I certify that the criminal investigators listed in the attachment were under my supervision during this reporting period and, in accordance with requirements of their official duties, performed work during unscheduled hours of duty or were available to work during unscheduled hours of duty and qualify for availability pay. I also certify that the agents listed in the attachment are expected to continue to meet these requirements.

Special Agent-in-Charge

or

Division Director
Investigations

Attachment

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ATTACHMENT

NAME	TITLE	SSN	POD
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